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<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/890,801	REES ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Robert L. Nasser	3736	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**  
 All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to paper filed 1/14/2005.
2. ☒ The allowed claim(s) is/are 1-30 and 32-59.
3. ☒ The drawings filed on 03 August 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

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|--|--|
| <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2. <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)</li> <li>3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br/>Paper No./Mail Date _____</li> <li>4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br/>of Biological Material</li> </ol> | <ol style="list-style-type: none"> <li>5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</li> <li>6. <input type="checkbox"/> Interview Summary (PTO-413),<br/>Paper No./Mail Date _____</li> <li>7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment</li> <li>8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance</li> <li>9. <input type="checkbox"/> Other _____</li> </ol> |
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An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Robert Gnuse on March 30, 2005.

The application has been amended as follows:

In claim 30, lines 33-37, the phrase "wherein the assessment of change in oxygen level in the inspired gas is based on a predefined set of data representing statistical distributions of parameters stored within data storage means associated with the computer and on said measurement(s)" has been changed to -- wherein the assessment of change in oxygen level in the inspired gas is based on a predefined set of data representing statistical distributions of parameters stored within data storage means associated with the computer and on said measurement(s) --.

In claim 50, line 1, the words -- embodied on a computer readable medium -- have been added after the word product.

Claim 30 was amended to place the claim in conformance with 37 CFR 1.121, as the added material was not underlined.

Claim 50 was amended in that there is no definition on the record limiting a computer program product to a tangible thing and as such, a product is non-statutory.

Claims 1-14 and 49-53 define over the art in that none of the art determines respiratory parameters, as defined in the specification, based on two concurrent

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measurements of inspiratory or expiratory oxygen levels and blood oxygen levels, as claimed. Claims 15-29 and 54-56 define over the art in that none of the art has the computer adapted to determine if more measurements are required. In both sets of claims (10-14 and 15-29), the claims recite that the computer is adapted to make certain calculations. The examiner is interpreting the term "adapted" to mean programmed to make the calculations, as opposed to being capable of making the calculations.

Claims 30-48 and 57 define over the art in that none of the art shows the methods of assessing the change in oxygen levels.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (571) 272-4731. The examiner can normally be reached on Mon-Fri, variable hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Robert L. Nasser  
Primary Examiner  
Art Unit 3736

RLN  
March 30, 2005

A handwritten signature in black ink, appearing to read "Robert L. Nasser", with a stylized flourish at the end.

ROBERT L. NASSER  
PRIMARY EXAMINER